

An aerial photograph of the Dubai skyline, featuring the Burj Khalifa as the central focus. The city is densely packed with skyscrapers, and a complex network of highways and overpasses is visible in the foreground. The sky is a clear, vibrant blue with some light, wispy clouds. The overall scene is captured from a high angle, looking down on the city.

DISPUTE RESOLUTION IN THE MIDDLE EAST

Power of attorney



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POWER OF ATTORNEY

GENERAL OVERVIEW

A Power of Attorney (PoA) is a legal document which empowers one party ("agent") to act on behalf of, and bind, another party ("principal"). In the onshore, civil jurisdictions of the Gulf Cooperation Council (GCC), a PoA must be produced before a lawyer (as agent) can appear on behalf of his/her client in court, arbitration or in front of any government authority.

It is dangerous to assume that PoAs are straightforward documents. Numerous issues must be considered when drafting a PoA if it is to fulfil its purpose. Even a slight mistake may have a negative impact on the principal's position and may prevent the agent from being able to represent the principal or render actions carried out by the agent void. For these reasons, it is critical that businesses have in place:

- Adequately worded constitutional documents or PoAs granting the requisite authority to those of its officers or employees who are intended to sign contracts containing arbitration clauses; and
- Adequately worded PoAs for particular disputes, which are obtained at an early stage and grant their legal representatives sufficient powers to act on their behalf throughout the course of the dispute.

This volume focuses on PoAs granted in the context of disputes (ie litigation or arbitration), though PoAs can be produced for a range of purposes.

ONSHORE LITIGATION

By way of example, in the United Arab Emirates (UAE), Article 55(2) of the UAE Federal Law No.11 of 1992 ("Civil Procedure Law") requires a legal advisor to prove that he/she has the requisite power to represent their client. The procedural laws of the other GCC countries have similar provisions, which are the source of the requirement for PoAs.

The following are the key considerations when producing a PoA:

Language

In common with all official documents submitted to courts in the GCC, PoAs must be in Arabic. That said, it is usual (given the importance of the document) for international clients to have bilingual PoAs produced.

Scope of powers

Since PoAs involve delegation of powers to an agent, it is important that the PoA is not too widely drafted. However, in the context of disputes, it is important to produce a PoA which encompasses all possible permutations that may occur throughout the duration of the case (for example, withdrawal or addition of claims, settlement discussions, filing appeals, etc.). If this does not happen, legal representatives may not be able to represent the client effectively throughout the dispute, or a new PoA may have to be produced.

To whom should powers be delegated?

What is permissible depends on the relevant jurisdiction but, as a general rule, more than one lawyer at the law firm representing the principal should be named in the PoA. This is to ensure that changes in personnel do not

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prevent effective representation.

Notarization

It is the duty of the courts to ensure that parties filing or defending cases before them have the requisite authority to do so. In order to ensure this, the courts have given powers to Public Notaries, who are part of the judicial system. In the context of PoAs, Notaries witness signatures, but more importantly they also review the underlying constitutional documents of the principal to establish whether the individual in front of them has valid authority (sometimes through a chain of delegating documents) to grant the relevant powers.

Overseas companies

It is relatively straightforward for a party located onshore in the GCC to issue a PoA. However, attesting a PoA overseas (eg for a corporate entity based outside the jurisdiction) is often time-consuming and costly. Because of this, it is important to plan and start this process at the earliest opportunity. For example, in some jurisdictions, the party will be required to have the PoA notarized, and then attested by their own country's Ministry of Foreign Affairs (or equivalent), then the relevant GCC embassy. The PoA must then be sent to the relevant GCC country, and "brought onshore" by being attested by the relevant Ministry of Foreign Affairs. Sometimes, there are additional requirements. Since this process can take weeks or even months, and urgent action might be required, this process needs early consideration and action.

OFFSHORE LITIGATION

There is no requirement to produce PoAs in the offshore courts of the Dubai International Financial Centre, Abu Dhabi Global Market or Qatar Financial Centre. Ordinarily, no issues of authority arise in these courts. If they were to arise, a simple letter from the client would normally be sufficient to satisfy the court that the legal representative had authority to appear on behalf of their client.

ARBITRATION

The critical point for PoAs in the context of arbitration in the Middle East is that, because arbitration is generally regarded by the onshore courts as an extraordinary waiver of the right to litigate, specific powers must be granted by the principal to an agent before that agent can validly commit the principal to an arbitration agreement. For example, in the UAE, Article 4 of Federal Law No. 6 of 2018 on Arbitration (the "**Arbitration Law**") (read together with Article 58(2) of the Civil Procedure Law) requires a principal to expressly state in the relevant PoA that the agent has the power to enter into an arbitration agreement on their behalf. Without such express authority, there is a real risk that the arbitration agreement in a contract will be void and unenforceable – even if the agent had express authority to sign the contract on behalf of the principal (but not specifically the arbitration agreement contained within it) and Article 53.1(b) of the Arbitration Law identifies this as a ground on which an arbitral award can be challenged. International and regional companies often disregard these formal requirements – and the results can be catastrophic.

More generally, even in arbitrations seated offshore (or in most jurisdictions outside the Middle East), the requisite authority should still be obtained for companies incorporated in onshore Middle East jurisdictions, or there is a risk that any award rendered in any subsequent arbitration will not be enforced by the onshore courts.

However, in arbitrations which are seated onshore in the region, PoAs (or other letters of authority) are generally exchanged at the first procedural hearing – even though it is questionable whether this is a

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requirement in some regional jurisdictions. Issues are frequently raised as to the adequacy of those documents, so real attention to detail is required to ensure the authority documents are sufficient and demonstrate a clear chain of authority passing to the legal representative. Some tribunals prefer to attach the PoAs relied on to their awards, and there is often a paragraph in the Terms of Reference for the arbitration confirming that both parties are satisfied with the PoAs that their opponents have produced.

One important consideration is whether the relevant PoA grants those signing the Terms of Reference in the arbitration the power to enter into arbitration agreements. If the power is wide enough to encompass this power, then the act of signing may give rise to a new arbitration agreement – which may "perfect" what may be an imperfectly concluded arbitration agreement in the original contract.

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